

rehearing or hearing, whichever is applicable, provided the decision on rehearing or hearing is favorable to the tribe.

(b) On failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or devisees.

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7508, Feb. 10, 2011]

**§ 30.263 May a surviving spouse reserve a life estate when a tribe exercises its statutory option to purchase?**

Yes. When the heir or devisee whose interests are subject to the tribal purchase option is a surviving spouse, the spouse may reserve a life estate in one-half of the interests.

(a) To reserve a life estate, the spouse must, within 30 days after the tribe has exercised its option to purchase the interest, file with the agency both:

(1) A written notice to reserve a life estate; and

(2) A certification that copies of the notice have been mailed on the same date to the judge and the tribe.

(b) Failure to file the notice on time, as required by paragraph (a)(1) of this section, constitutes a waiver of the option to reserve a life estate.

**§ 30.264 When must BIA furnish a valuation of a decedent's interests?**

(a) BIA must furnish a valuation report of the decedent's interests when the record reveals to the agency:

(1) That the decedent owned interests in land located on one or more of the reservations designated in § 30.260; and

(2) That one or more of the probable heirs or devisees who may receive the interests either:

(i) Is not enrolled in the tribe of the reservation where the land is located; or

(ii) Does not have the required blood quantum in the tribe to hold the interests against a claim made by the tribe.

(b) When required by paragraph (a) of this section, BIA must furnish a valuation report in the probate file when it is submitted to OHA. Interested parties may examine and copy, at their expense, the valuation report at the agency.

(c) The valuation must be made on the basis of the fair market value of the property, as of the date of decedent's death.

(d) If there is a surviving spouse whose interests may be subject to the tribal purchase option, the valuation must include the value of a life estate based on the life of the surviving spouse in one-half of such interests.

**§ 30.265 What determinations will a judge make with respect to a tribal purchase option?**

(a) If a tribe files a written notice of purchase under § 30.261(a), a judge will determine:

(1) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the applicable statute;

(2) The entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests that have been purchased by a tribe; and

(3) The fair market value of such interests, as determined by an appraisal or other valuation method developed by the Secretary under 25 U.S.C. 2214, including the value of any life estate reserved by a surviving spouse.

(b) In making a determination under paragraph (a)(1) of this section, the following issues will be determined by the official tribal roll, which is binding on the judge:

(1) Enrollment or refusal of the tribe to enroll a specific individual; and

(2) Specification of blood quantum, where pertinent.

(c) For good cause shown, the judge may stay the probate proceeding to permit an interested party who is adversely affected to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

**§ 30.266 When is a final decision issued?**

This section applies when a decedent is shown to have owned land interests in any one or more of the reservations designated in § 30.260.

(a) The probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors must first be concluded as

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final for the Department under this part. This decision is referred to in this section as the “probate decision.”

(b) At the formal probate hearing, a finding must be made on the record showing those interests in land, if any, that are subject to the tribal purchase option.

(1) The finding must be included in the probate decision and must state:

(i) The apparent rights of the tribe as against affected heirs or devisees; and

(ii) The right of a surviving spouse whose interests are subject to the tribal purchase option to reserve a life estate in one-half of the interests.

(2) If the finding is that there are no interests subject to the tribal purchase option, the decision must so state.

(3) A copy of the probate decision, together with a copy of the valuation report, must be distributed to all interested parties under § 30.237.

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7508, Feb. 10, 2011]

### § 30.267 What if I disagree with the probate decision regarding tribal purchase option?

If you are an interested party who is adversely affected by the probate decision, you may, within 30 days after the date on which the probate decision was mailed, file with the judge a written petition for rehearing under this part.

### § 30.268 May I demand a hearing regarding the tribal purchase option decision?

Yes. You may file with the judge a written demand for hearing if you are an interested party who is adversely affected by the exercise of the tribal purchase option or by the valuation of the interests in the valuation report.

(a) The demand for hearing must be filed by whichever of the following deadlines is applicable:

(1) Within 30 days after the date of the probate decision;

(2) Within 30 days after the date of the decision on rehearing; or

(3) Within 20 days after the date on which the tribe exercises its option to purchase available interests.

(b) The demand for hearing must:

(1) Include a certification that copies of the demand have been mailed on the

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same date to the agency and to each interested party; and

(2) State specifically and concisely the grounds on which it is based.

### § 30.269 What notice of the hearing will the judge provide?

On receiving a demand for hearing, the judge must:

(a) Set a time and place for the hearing after expiration of the 30-day period fixed for the filing of the demand for hearing as provided in § 30.268; and

(b) Mail a notice of the hearing to all interested parties not less than 20 days in advance of the hearing.

### § 30.270 How will the hearing be conducted?

(a) At the hearing, each party challenging the tribe’s claim to purchase the interests in question or the valuation of the interests in the valuation report will have the burden of proving his or her position.

(b) On conclusion of the hearing, the judge will issue a decision that determines all of the issues including, but not limited to:

(1) The fair market value of the interests purchased by the tribe; and

(2) Any adjustment to the fair market value made necessary by the surviving spouse’s decision to reserve a life estate in one-half of the interests.

(c) The decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the date on which the decision was mailed, and giving the Board’s address.

(d) The judge must:

(1) Forward the complete record relating to the demand for hearing to the LTRO as provided in § 30.233;

(2) Furnish a duplicate record thereof to the agency; and

(3) Mail a notice of such action together with a copy of the decision to each interested party.

### § 30.271 How must the tribe pay for the interests it purchases?

(a) A tribe must pay the full fair market value of the interests purchased, as set forth in the appraisal or